

IN THE FIJI COURT OF APPEAL

At Suva

Civil Jurisdiction

CIVIL APPEAL NO. 14 OF 1991

(High Court Civil Appeal No. 3 of 1989)

BETWEEN:WAZAL KHANARSALA KHANt/a KHAN'S BULLDOZING WORKSAPPELLANTS

-and-

KIRAN WATIRESPONDENT

Mr. I. C. S. Akhil for the Appellants

Mr. C. B. Young for the Respondent

Date of Hearing : 19th August, 1992Date of Delivery of Judgment : 24th August, 1992J U D G M E N T

This is an appeal from the decision of Jayaratne J in the High Court who dismissed an appeal from the Magistrate on an application for Workmen's Compensation made under the Workmen's Compensation Act Cap. 94.

On 4th February, 1986 Shiri Prasad suffered personal injury by accident in the course of work he was performing for the appellants and from that injury he died. His widow made an application for compensation which came before Mr. Sahu Khan, Resident Magistrate on 23rd March 1989. The only matter in issue

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upon that application was whether the deceased had been an employee of the appellants or an independent contractor. The Magistrate held that he had been an employee with the result that compensation was payable. On appeal from that decision Jayaratne J held that the Magistrate had not erred in his findings and that his conclusions were correct. He accordingly dismissed the appeal.

The appellants now seek to appeal to this Court. As provided by s.12(1)(c) of the Court of Appeal Act Cp.12 they may do so on a question of law only.

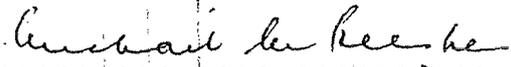
We had difficulty in discerning what the question of law on this appeal was. In essence the argument advanced to us was that there had been insufficient evidence before the Magistrate to justify the findings which he made and that the Judge had erred in holding that the Magistrate had properly evaluated the evidence.

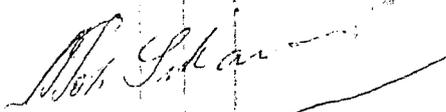
We do not consider these are questions of law. The sufficiency of the evidence was a matter for consideration by the Judge in the High Court on appeal. It is not a matter of law for consideration by this Court. In effect counsel for the appellant sought to re-open and re-argue the facts of the case in this Court but we are not prepared to entertain the matter on that basis.

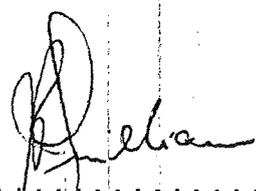
So far as the decision of the Judge is concerned it was contended that he was wrong in holding that the Magistrate had properly evaluated the evidence. This again is not a matter of law for determination by this Court.

While it is no doubt the case that there were some inconsistencies and conflicts in the evidence these were considered and resolved in the appropriate hearing and this Court cannot now review the conclusions which were drawn.

We are unable to find any error of law made by the Judge and the appeal is accordingly dismissed with costs.


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Mr Justice Michael M Helsham
President, Fiji Court of Appeal


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Sir Moti Tikaram
Resident Judge of Appeal


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Sir Peter Quilliam
Judge of Appeal